

Doychinoski (Migration) [2020] AATA 6039 (30 November 2020)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mr Darko Doychinoski Ms Aleksandra Iliyevska Ms Izabella Doychinoska
CASE NUMBER:	1812970
DIBP REFERENCE(S):	BCC2017/957321
MEMBER:	Marten Kennedy
DATE:	30 November 2020
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal remits the applications for Temporary Business Entry (Class UC) visas for reconsideration, with the direction that the first named applicant meets the following criteria for Subclass 457 (Temporary Work (Skilled)) visas: • Public Interest Criterion 4020(1) for the purposes of cl.457.224 of Schedule 2 to the Regulations.

Statement made on 30 November 2020 at 5:42pm

CATCHWORDS

MIGRATION – Temporary Business Entry (Class UC) – Subclass 457 (Temporary Work (Skilled)) – Painting Trades Worker – ‘no evidence’ of bogus document – work reference from former employer – ‘reasonable suspicion’ – false or misleading information – work experience – assessment of the quality of the evidence being relied on – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), s 65

Migration Regulations 1994 (Cth), Schedule 2, cl 457.224; Schedule 4, PIC 4020

CASES

Arora v MIBP [2016] FCAFC 35

Batra v MIAC [2013] FCA 274

STATEMENT OF DECISION AND REASONS

3. This is an application for review of a decision made by a delegate of the Minister for Immigration on 17 April 2018 to refuse to grant the applicants Temporary Business Entry (Class UC) visas under s.65 of the *Migration Act 1958* (the Act).
4. The applicants applied for the visas on 10 March 2017. The delegate refused to grant the visas on the basis that the first named applicant (the applicant) did not satisfy the requirements of cl.457.224 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the delegate considered there was evidence the applicant had given a bogus document or information that was false or misleading in relation to the visa application.
5. Essentially, the applicant has applied for the visa as a painting trades worker (ANZSCO 332211). To demonstrate his skills, experience and qualifications, among other documents, the applicant had provided a statement of his former employer “Fi Prom” in Macedonia attesting the applicant’s employment and the tasks undertaken during his employment. The document was referred to the Australian Embassy in Belgrade. Embassy staff established that the employer appeared on the Macedonian Trade Register, but the primary activity of the employer was identified on the register as pertaining to the sale of metal goods, paints and glass in retail stores. From this information, the delegate inferred that the reference, which described the applicant having undertaken tasks associated with being a painter, appeared to have been embellished, and found this to be evidence that the applicant had given a bogus document.
6. The first and second-named applicants appeared before the Tribunal on 26 November 2020 to give evidence and present arguments. The Tribunal also received oral evidence from Mr Jordanovski via telephone link to Macedonia. Now retired, Mr Jordanovski was the owner of Fi Prom, the applicant’s former employer, and the purported author of the document in question.
7. The Tribunal hearing was conducted with the assistance of an interpreter in the Bulgarian and English languages. The Tribunal proceeded on the basis that the Bulgarian and Macedonian languages are mutually intelligible to a very high degree.
8. The applicants were represented in relation to the review by their registered migration agent. The representative attended the Tribunal hearing.

CONSIDERATION

9. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl.457.224 for the grant of the visa. Broadly speaking, and relevantly, this requires that there is ‘no evidence that the applicant has given, or caused to be given, to the Minister ... a bogus document or information that is false or misleading in a material particular in relation to the application for the visa...’. The Public Interest Criterion has additional requirements pertaining to earlier visa applications and identity that have not been put in issue in this review.
10. The requirement in PIC 4020(1) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4).
11. It is not in issue that the applicant ‘gave’ the document in question to the Department. What is in issue however is whether the document is a ‘bogus document’ or otherwise represents the applicant giving false or misleading information to the Minister.

12. The term 'information that is false or misleading in a material particular' is defined in PIC4020(5) and the term 'bogus document' is defined in s.5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
13. As to what is meant by the requirement that there 'is no evidence', it has been explained by the courts that the word 'evidence' is used to impose a requirement that the facts conveyed by the material must be sufficiently probative to lead to the conclusion that information given in connection with the application for a visa was false or misleading in a material particular.¹ The consideration of 'evidence' requires an assessment of the quality of the evidence being relied on by the Tribunal before finding whether an applicant fails to satisfy the criterion,² and satisfaction that there is 'evidence' is to be formed reasonably upon the material before it.³
14. In identifying whether a document is a bogus document, the courts have described a 'relatively undemanding test' of 'reasonable suspicion'.
15. In my view, now relevantly reinforced by the evidence of the applicant and of Mr Jordanovski at hearing, the investigations by the embassy in Belgrade do not provide sufficiently probative material to indicate that the information in the document is false or misleading, nor that gives rise to a reasonable suspicion that the document is bogus.
16. To the contrary, having taken evidence from the applicant and Mr Jordanovski, I am positively satisfied that the document is either a genuine translation of a document signed by Mr Jordanovski, or an English language document signed by Mr Jordanovski, and thus is neither counterfeit, or obtained as a result of a false or misleading statement. I am satisfied the document is genuine and its contents are true and correct.
17. On this issue, I heard evidence from Mr Doychinoski about his employment with Fi Prom. Mr Doychinoski has confirmed that the business provided supplies for building maintenance and painting, but also quoted for and undertook the painting trades work for customers. While I recognise that in Australia it may be unusual for a retail paint business to also employ licensed painters and decorators to undertake painting work for clients, I do not share the delegate's scepticism that businesses of this nature might exist elsewhere.
18. Mr Jordanovski gave evidence describing his business and confirming that Mr Doychinoski was one of three painters he employed at the time. Mr Jordanovski cogently explained the business process whereby he would quote on work at the request of customers and then arrange for his employed painters to undertake the work. After taking evidence from Mr Jordanovski about his business practices generally and his relationship with Mr Doychinoski I explained with more precision what the concern was with the document attributed to him. Mr Jordanovski told me he could recall signing a reference for Mr Doychinoski, but could not now recall specifically whether he had originally signed a document in Macedonian or in English once he was made aware of its contents. I note that the applicant has subsequently provided a document dated 10 November 2020 correctly matching an untranslated version with a certified translation. In this regard, I note that the applicant has engaged different migration representation, and was critical of the conduct of his former agent.

¹*Sharma v MIMAC* [2013] FCCA 1280 at [33]–[37]..

²*Talukder v MIAC* [2009] FMCA 223,

³*Sharma v MIMAC* [2013] FCCA 1280 at [39].

19. Having raised the specific issue before me with Mr Jordanovski, I took him to aspects of the document in question and confirmed that he accepted the accuracy of the remarks attributed to him. Mr Jordanovski categorically endorsed the content of the document.
20. I formed no perception that I was being misled in respect of this evidence. I accept Mr Jordanovski's evidence endorsing the genuineness of the document in question, and accept his evidence that the content of the reference is materially true and correct in terms of the information it conveys about the applicant's tasks during his employment.
21. I am not satisfied that there is evidence before the Tribunal that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth a 'bogus document', or 'information that is false or misleading in a material particular'.
22. Therefore, the applicant meets PIC 4020(1).

DECISION

23. The Tribunal remits the applications for Temporary Business Entry (Class UC) visas for reconsideration, with the direction that the first named applicant meets the following criteria for Subclass 457 (Temporary Work (Skilled)) visas:

- Public Interest Criterion 4020(1) for the purposes of cl.457.224 of Schedule 2 to the Regulations.

Marten Kennedy
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- ...
- (5) In this clause:
information that is *false or misleading in a material particular* means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.
- ...

Migration Act 1958

s.5 Interpretation

- (1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

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